

HOUSE BILL 299

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Nathan P. Small

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE IMPROVEMENT SPECIAL ASSESSMENT ACT; AUTHORIZING COUNTIES TO IMPOSE, ADMINISTER AND DISBURSE SPECIAL ASSESSMENTS TO ENCOURAGE THE DEVELOPMENT OF CERTAIN PROPERTY IMPROVEMENTS; REPEALING THE SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Improvement Special Assessment Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Improvement Special Assessment Act:

A. "capital provider" means a private entity or its designee, successor or assigns that finances or refinances an eligible improvement pursuant to the Improvement Special Assessment Act;

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1           B. "county" means a county, including an H class  
2 county;

3           C. "county ordinance" means an ordinance adopted by  
4 a county pursuant to the Improvement Special Assessment Act to  
5 establish a program within a designated region;

6           D. "department" means the economic development  
7 department;

8           E. "eligible improvement" means a permanently  
9 affixed energy efficiency improvement, renewable energy  
10 improvement, water conservation improvement or resiliency  
11 improvement installed on eligible property as part of the  
12 construction or renovation of the property;

13           F. "eligible property" means privately owned  
14 commercial, industrial or agricultural or nonprofit real  
15 property or multifamily residential real property with five or  
16 more dwelling units, including real property owned by an entity  
17 formally recognized as tax exempt pursuant to Section 501(c)3  
18 of the Internal Revenue Code of 1986, as amended;

19           G. "energy efficiency improvement" means measures,  
20 equipment or devices that result in a decrease in consumption  
21 of or demand for electricity or natural gas;

22           H. "local government" means a municipality, county  
23 or other general function governmental unit established by  
24 state law;

25           I. "program" means a special assessment program

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1 that utilizes and conforms to the program guidebook and uniform  
2 special assessment documents established by the department  
3 pursuant to the Improvement Special Assessment Act;

4 J. "program administrator" means a person  
5 designated by a county to administer a program pursuant to the  
6 requirements of the Improvement Special Assessment Act;

7 K. "program guidebook" means a comprehensive  
8 document created by the department pursuant to the Improvement  
9 Special Assessment Act, including uniform assessment documents,  
10 appropriate guidelines, specifications, approval criteria and  
11 other standard forms consistent with the administration of a  
12 program that are not detailed in the Improvement Special  
13 Assessment Act;

14 L. "project application" means an application  
15 submitted to a program administrator to demonstrate that a  
16 proposed project qualifies for special assessment financing  
17 pursuant to a program;

18 M. "region" means a geographical area as designated  
19 by a county pursuant to the Improvement Special Assessment Act;

20 N. "renewable energy improvement" means an energy  
21 system that generates energy by use of low- or zero-emissions  
22 generation technology with substantial long-term production,  
23 including solar, wind and geothermal resources, fuel cell  
24 equipment using an electrochemical process to generate  
25 electricity and heat or biomass resources;

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1           O. "resiliency improvement" means improvements that  
2 increase the resilience of a property, including air quality,  
3 flood mitigation, storm water management, energy storage and  
4 microgrids, alternative vehicle charging infrastructure, fire  
5 or wind resistance or inundation adaptation;

6           P. "special assessment" means a voluntary  
7 assessment imposed on a property pursuant to the Improvement  
8 Special Assessment Act for the total amount of special  
9 assessment financing;

10          Q. "special assessment agreement" means a voluntary  
11 agreement of a property owner to allow a county to place an  
12 assessment on the owner's property to repay special assessment  
13 financing pursuant to the Improvement Special Assessment Act;

14          R. "special assessment assignable certificate"  
15 means a document assigning a special assessment lien from the  
16 county to a capital provider in an amount not to exceed the  
17 amount of the special assessment financing for the term of the  
18 special assessment lien;

19          S. "special assessment financing" means the total  
20 amount of financing provided by a capital provider pursuant to  
21 a special assessment financing agreement, including accrual of  
22 interest and penalties, charges, fees and cost of enforcement  
23 of a special assessment lien;

24          T. "special assessment financing agreement" means a  
25 contract pursuant to which a property owner agrees to repay a

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1 capital provider for special assessment financing and to the  
2 terms of the special assessment financing, including the  
3 treatment of prepayment and partial payment of a special  
4 assessment;

5 U. "special assessment lien" means a lien recorded  
6 in all counties in which the eligible property is located to  
7 secure the special assessment, which assessment remains on the  
8 property until paid in full;

9 V. "uniform assessment documents" means the forms  
10 of county ordinance, special assessment agreement, special  
11 assessment lien, special assessment assignable certificate and  
12 other model documents prepared by the department pursuant to  
13 the Improvement Special Assessment Act for use in the program;  
14 provided, however, the department shall not mandate a form of  
15 special financing agreement that shall be supplied by a capital  
16 provider; and

17 W. "water conservation improvement" means measures,  
18 equipment or devices that decrease the consumption of or demand  
19 for water, address safe drinking water or eliminate lead from  
20 water used for drinking or cooking.

21 SECTION 3. [NEW MATERIAL] ORDINANCE ESTABLISHING THE  
22 PROGRAM.--The board of county commissioners of a county may by  
23 county ordinance establish a program. The county ordinance  
24 shall be substantively in the form set forth in the program  
25 guidebook and shall:

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1           A. include a statement that the financing of  
2 eligible improvements, repaid by special assessments on  
3 eligible property benefited by such improvements, is in the  
4 interest of the public health, safety and welfare;

5           B. designate the region in which eligible property  
6 owners may finance eligible improvements pursuant to the  
7 Improvement Special Assessment Act; a county may designate more  
8 than one region and if multiple regions are designated, the  
9 regions may be separate, overlapping or coterminous;

10          C. incorporate by reference the program guidebook,  
11 notwithstanding that a county adopting a program pursuant to  
12 the Improvement Special Assessment Act may narrow the  
13 definition of eligible improvements to be consistent with the  
14 county's climate goals;

15          D. authorize and direct a county official to enter  
16 into special assessment agreements with property owners and  
17 capital providers and special assessment assignable  
18 certificates on behalf of the county to impose special  
19 assessments and assign special assessment liens for assessments  
20 approved by the program administrator pursuant to this section;

21          E. authorize direct financing between an eligible  
22 property owner and a capital provider to finance eligible  
23 improvements;

24          F. designate a program administrator;

25          G. establish allowable dates for the payment of

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1 installments of special assessments, including provisions for  
2 differing optional time periods over which installments of  
3 special assessments may be paid, which time periods shall be  
4 consistent with the payment dates for property taxes or other  
5 assessments due to the county;

6 H. require that the interest rate, delinquent  
7 interest, penalties, terms of prepayment and other terms of a  
8 special assessment shall be established by a capital provider  
9 in the related special assessment financing agreement for such  
10 assessment; and

11 I. direct the county treasurer to bill a special  
12 assessment imposed pursuant to a special assessment agreement  
13 on the property tax bill or stand-alone bill for the property  
14 subject to the special assessment and to collect the special  
15 assessment at the times described in the special assessment  
16 agreement and as provided for in the county ordinance.

17 SECTION 4. [NEW MATERIAL] APPROVAL OF SPECIAL  
18 ASSESSMENT.--

19 A. Prior to entering into a special assessment  
20 agreement, a property owner shall submit a project application  
21 to the program administrator in a form consistent with the  
22 program guidebook. The application shall include:

23 (1) for an existing eligible property:

24 (a) where energy efficiency

25 improvements, water conservation improvements or renewable

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1 energy improvements are proposed, certification by a licensed  
2 professional engineer or other professional listed in the  
3 program guidebook stating the proposed eligible improvements  
4 will either result in more efficient use or conservation of  
5 energy or water, the reduction of greenhouse gas emissions or  
6 the addition of renewable sources of energy or water; or

7 (b) where resiliency improvements are  
8 proposed, certification by a licensed professional engineer  
9 stating the qualified improvements will result in improved  
10 resilience;

11 (2) for construction of a new eligible  
12 property, certification by a licensed professional engineer  
13 stating that the proposed eligible improvements will enable the  
14 property to exceed the energy efficiency, water conservation,  
15 renewable energy, renewable water or resilience requirements of  
16 the applicable building code;

17 (3) certification that the property owner  
18 requesting the proposed eligible improvements is the owner of  
19 record of the property on which the special assessment will be  
20 imposed and that there are no delinquent taxes or assessments  
21 on the property;

22 (4) the name of the capital provider providing  
23 the special assessment financing and the proposed terms of the  
24 special assessment financing agreement, including:

25 (a) the special assessment financing

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1 amount;

2 (b) the interest rate;

3 (c) administrative fees paid to the  
4 county;

5 (d) a schedule of the installments of  
6 the special assessment;

7 (e) the number of years the special  
8 assessment shall be imposed on the property;

9 (f) delinquent interest or penalties;  
10 and

11 (g) the conditions by which the property  
12 owner may prepay and permanently satisfy the debt owed pursuant  
13 to the special assessment financing agreement and remove the  
14 special assessment lien from the property; and

15 (5) written consent from any holder of a lien,  
16 mortgage or security interest in the real property that the  
17 property may participate in the program and that the special  
18 assessment lien shall have priority coequal with other property  
19 tax and assessment liens.

20 B. Prior to entering into a special assessment  
21 agreement, the county shall receive from the program  
22 administrator certification that the proposed eligible  
23 improvements, eligible property and property owner qualify for  
24 financing pursuant to the program.

25 SECTION 5. [NEW MATERIAL] IMPOSITION OF SPECIAL

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1 ASSESSMENT--AMOUNT--COLLECTION--SPECIAL ASSESSMENT LIEN  
2 CREATED.--

3 A. Upon entering into a special assessment  
4 agreement, the county shall record a special assessment lien on  
5 the subject property in the real property records of the county  
6 in which the property is located.

7 B. The recording of the lien pursuant to Subsection  
8 A of this section shall include:

- 9 (1) the legal description of the property;
- 10 (2) the county assessor's parcel number of the  
11 property;
- 12 (3) the grantor's name, which shall be the  
13 same as the property owner on the special assessment agreement;
- 14 (4) the grantee's name, which shall be the  
15 county in which the property is located;
- 16 (5) the date on which the special assessment  
17 lien was created;
- 18 (6) the principal amount of the special  
19 assessment lien;
- 20 (7) the terms and length of the special  
21 assessment lien; and
- 22 (8) a copy of the special assessment  
23 agreement.

24 C. A special assessment lien shall be effective  
25 during the period in which the special assessment is imposed

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1 and shall have priority coequal with other property tax liens  
2 and assessments.

3 D. A special assessment lien runs with the land,  
4 and that portion of the special assessment lien that has not  
5 yet become due is not accelerated or eliminated by foreclosure  
6 of the special assessment lien or any lien for taxes or  
7 assessments imposed by the state, a local government or taxing  
8 district against the property on which the special assessment  
9 lien is imposed.

10 E. Upon entering into a special assessment  
11 agreement, the county shall execute and record a special  
12 assessment assignable certificate from the county to the  
13 appropriate capital provider. The special assessment  
14 assignable certificate shall contain:

- 15 (1) the legal description of the property  
16 covered by the special assessment assignable certificate;
- 17 (2) the county assessor's parcel number of the  
18 property;
- 19 (3) the grantor's name, which shall be the  
20 county in which the property is located;
- 21 (4) the grantee's name, which shall be the  
22 appropriate capital provider and its successors and assigns;
- 23 (5) the date on which the special assessment  
24 assignable certificate was created; and
- 25 (6) the amount and terms of the special

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1 assessment lien assigned in the special assessment assignable  
2 certificate.

3 F. When the underlying special assessment financing  
4 has been satisfied, the special assessment shall be removed  
5 from the property and the county shall record a release of the  
6 special assessment lien.

7 G. Special assessments shall be collected at times  
8 allowable pursuant to the applicable county ordinance and as  
9 set forth in a special assessment agreement. Money derived  
10 from the imposition and collection of a special assessment  
11 shall be kept separately from other county funds, and each  
12 special assessment payment received by the county shall be  
13 promptly remitted to the holder of the special assessment  
14 assignable certificate for the related property.

15 SECTION 6. ~~[NEW MATERIAL]~~ DELINQUENT SPECIAL ASSESSMENT  
16 PAYMENTS--ENFORCEMENT OF SPECIAL ASSESSMENT LIENS.--

17 A. Delinquent payments due on a special assessment  
18 incur interest and penalties as specified in the special  
19 assessment financing agreement.

20 B. Delinquent payments due on a special assessment  
21 shall be enforced in the event of a nonpayment of the special  
22 assessment or installment thereto.

23 C. Delinquent payments due on a special assessment  
24 have the effect of a mortgage and shall be foreclosed and sold  
25 in the manner provided by law for the foreclosure of mortgages

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1 on real estate.

2 D. The county shall institute proceedings to  
3 foreclose the special assessment lien against any property that  
4 is delinquent in the payment of the special assessment or  
5 installment of a special assessment for a period of more than  
6 one year.

7 E. In any action seeking the foreclosure of a  
8 special assessment lien against any property after assignable  
9 certificates have been issued, if there is no other purchaser  
10 for the property having a delinquent special assessment, the  
11 county may:

12 (1) offer the property to the capital provider  
13 if all outstanding taxes are paid by the capital provider;

14 (2) purchase the property sold at the  
15 foreclosure sale; or

16 (3) bid, in lieu of cash, the full amount of  
17 the assessment, interest, penalties, attorney fees and costs  
18 found by the court to be due and payable pursuant to the  
19 special assessment lien and any costs taxed by the court in the  
20 foreclosure proceedings against the property ordered sold.

21 F. If the county fails or refuses to foreclose and  
22 sell a property for the delinquent installments due on a  
23 special assessment, any holder of a special assessment  
24 assignable certificate secured by the special assessment may  
25 foreclose the special assessment lien on such delinquent

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1 property in the manner provided by law for the foreclosure of  
2 mortgages on real estate.

3 G. Whenever a county is delinquent in the  
4 remittance of a special assessment payment received from a  
5 property owner to the holder of a special assessment assignable  
6 certificate pursuant to Subsection G of Section 5 of the  
7 Improvement Special Assessment Act, the holder of the special  
8 assessment assignable certificate issued against the related  
9 property has the rights and remedies for the collection of the  
10 special assessment as are given by law for the collection of  
11 judgments against municipalities, counties and school  
12 districts.

13 SECTION 7. [NEW MATERIAL] SPECIAL ASSESSMENT FINANCING.--

14 A. Special assessment financing shall be provided  
15 by capital providers and disbursed directly by capital  
16 providers to fund eligible improvements subject to a special  
17 assessment financing agreement.

18 B. The special assessment financing agreement shall  
19 specify that, notwithstanding the obligation of the county  
20 treasurer to remit a special assessment payment received from a  
21 property owner to the relevant special assessment certificate  
22 holder, the county is not liable in any way for the debt of the  
23 property owner, is not a third-party obligor and is not  
24 pledging or lending its credit to the property owner or the  
25 capital provider.

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1           SECTION 8. [NEW MATERIAL] ELIGIBLE COSTS--ADDITIONAL  
2 CRITERIA PROHIBITED.--

3           A. Costs capitalized into the special assessment  
4 financing principal amount may include:

- 5                   (1) the cost of materials and labor necessary
- 6 for installation or modification of an eligible improvement;
- 7                   (2) permit fees;
- 8                   (3) inspection fees;
- 9                   (4) capital provider's fees;
- 10                  (5) program administrative fees;
- 11                  (6) project development and engineering fees;
- 12                  (7) third-party review fees, including
- 13 verification review fees;
- 14                  (8) capitalized interest;
- 15                  (9) interest reserves;
- 16                  (10) escrow for prepaid property taxes and
- 17 insurance; and
- 18                  (11) any other fees or costs that may be
- 19 incurred by the property owner incident to the installation,
- 20 modification or improvement on a specific or pro rata basis.

21           B. A county or a program administrator shall not  
22 require property owners or capital providers to access  
23 administrative services from the county or program  
24 administrator other than those provided for in the Improvement  
25 Special Assessment Act.

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1 C. Program administrative fees shall reflect the  
2 reasonable costs of the county or program administrator to  
3 provide administrative services for the program but shall not  
4 exceed one percent of the principal amount of the special  
5 assessment financing.

6 SECTION 9. [NEW MATERIAL] PROGRAM GUIDEBOOK--PROGRAM  
7 ADMINISTRATOR.--

8 A. The department shall develop and make available  
9 on its website within ninety days of the effective date of the  
10 Improvement Special Assessment Act the program guidebook  
11 governing the terms and conditions under which financing for  
12 special assessments may be made available through the program.  
13 The program guidebook shall include:

14 (1) forms for the uniform assessment  
15 documents;

16 (2) a statement that the term of the special  
17 assessment financing agreement will not exceed the useful life  
18 of the proposed eligible improvements;

19 (3) a statement explaining the application  
20 process and eligibility requirements for participation in the  
21 program, consistent with Section 4 of the Improvement Special  
22 Assessment Act;

23 (4) a statement explaining the consent  
24 requirement provided in Section 4 of the Improvement Special  
25 Assessment Act; and

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1 (5) a statement explaining the engineer  
2 certification requirement set forth in Section 4 of the  
3 Improvement Special Assessment Act.

4 B. The department may elect to serve as a program  
5 administrator and may contract with a third party to assist  
6 with administration. In the event the department or its  
7 contracted third party provides administrative services for the  
8 program, counties establishing a program pursuant to the  
9 Improvement Special Assessment Act shall designate the  
10 department or its contracted third party as program  
11 administrator in addition to any other program administrator  
12 designated by the county.

13 C. The board of county commissioners may authorize  
14 a department or official of the county as program administrator  
15 pursuant to the county ordinance and may contract with a third  
16 party to assist with the administration of the program.

17 D. Pursuant to the Joint Powers Agreements Act, any  
18 combination of counties may agree to jointly administer the  
19 program pursuant to the Improvement Special Assessment Act, but  
20 the secretary of finance and administration shall not approve  
21 more than one joint powers agreement for the administration of  
22 a single program.

23 SECTION 10. [NEW MATERIAL] IMMUNITY.--Nothing in the  
24 Improvement Special Assessment Act shall be interpreted to  
25 pledge, offer or encumber the full faith and credit of a

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1 county.

2 SECTION 11. REPEAL.--Sections 4-55C-1 through 4-55C-9  
3 NMSA 1978 (being Laws 2009, Chapter 270, Sections 1 through 8  
4 and Laws 2019, Chapter 110, Section 4, as amended) are  
5 repealed.

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